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Election of judges of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January and 31 December 1994

Memorandum by the Secretary-General

I. Introduction

1. By its resolution 955 (1994) of 8 November 1994, the Security Council decided to establish an international tribunal for the sole purpose of prosecuting persons responsible for genocide and other serious violations of international humanitarian law committed in the territory of Rwanda and Rwandan citizens responsible for genocide and other such violations committed in the territory of neighbouring States, between 1 January 1994 and 31 December 1994, and to that end to adopt the Statute of the International Tribunal for Rwanda annexed thereto.

2. Elections for the judges of the two Trial Chambers of the International Tribunal for Rwanda took place in 1995. The terms of office of the six judges who were elected in those elections are due to expire on 24 May 1999.

3. By its resolution 1165 (1998) of 30 April 1998, the Security Council decided to establish a third Trial Chamber of the International Tribunal for Rwanda and, to that end, to amend articles 10, 11 and 12 of the Statute of the Tribunal and replace those articles with the provisions set out in the annex to that resolution. It further decided that the elections for the three judges of the third Trial Chamber should be held together with the elections for the six judges of the two existing Trial Chambers.

4. Pursuant to article 12, subparagraph 3 (a), of the Statute, the Legal Counsel, on behalf of the Secretary-General, by circular letter of 4 June 1998, invited States Members of the United Nations and non-member States maintaining permanent observer missions at United Nations Headquarters to submit their nominations for judges of the three Trial Chambers of the International Tribunal for Rwanda. In accordance with article 12, subparagraph 3 (b) of the Statute, each State was invited to nominate, within 30 days of the date of the invitation, up to two candidates, no two of whom were to be of the same nationality and neither of whom were to be of the same nationality as any judge on the Appeals Chamber of the Tribunal.[1]

5. The Legal Counsel also referred to the fact that, pursuant to paragraph 5 of article 12 of the Statute, the judges of the International Tribunal for Rwanda shall be

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elected for a term of four years and that, pursuant to paragraph 2 of Security Council resolution 1165 (1998), the terms of office of the judges to be elected in the current elections would expire on 24 May 2003. In this connection, the Legal Counsel stated that the judges of the International Tribunal for Rwanda were to serve on a full-time basis and thus could not engage in any other occupation of a professional nature during their tenure.

6. Moreover, the Legal Counsel stated that six out of the nine judges who were to be elected would take up office on 25 May 1999, following the expiration of the terms of office of the judges who currently made up the two existing Trial Chambers of the International Tribunal. He also drew attention to the fact that, by paragraph 3 of its resolution 1165 (1998), the Security Council had decided that, as an exceptional measure, three out of the nine newly elected judges, who would be designated by the Secretary-General in consultation with the President of the International Tribunal, were to commence their terms of office as soon as possible following the elections in order that the new third Trial Chamber created by that resolution might begin to function at the earliest possible date.

7. The five nominations which had been received by the Secretary-General within the period stipulated in subparagraph 3 (b) of article 12 of the Statute of the International Tribunal for Rwanda were forwarded by the Secretary-General to the President of the Security Council, in accordance with subparagraph 3 (c) of article 12, by means of a letter dated 8 July 1998 (S/1998/640). In that letter, the Secretary-General noted that the number of candidates whose nominations had been received was short of the minimum number of candidates who, in accordance with subparagraph 3 (c) of article 12 of the Statute, were to make up the list which the Security Council was to establish for transmission to the General Assembly. In view of that fact, the Secretary-General suggested that the Council extend the period within which States might nominate candidates for election to the Trial Chambers of the International Tribunal for Rwanda until 4 August 1998. At its 3908th meeting, on 15 July 1998, the Security Council decided to agree to that suggestion. The President of the Council informed the Secretary-General of that decision by means of a letter dated 15 July 1998 (S/1998/646).

8. The 14 nominations which had been received within the period stipulated in subparagraph 3 (b) of article 12 of the Statute of the International Tribunal for Rwanda, as extended by the Security Council in the decision taken at its 3908th meeting, on 15 July 1998, were forwarded by the Secretary-General to the President of the Security Council, in accordance with subparagraph 3 (c) of article 12, by means of a letter dated 7 August 1998. In that letter, the Secretary-General noted that the number of candidates whose nominations had been received remained short of the minimum number of candidates who, in accordance with subparagraph 3 (c) of article 12 of the Statute, were to make up the list which the Security Council was to establish for transmission to the General Assembly. In the light of this information, the Security Council, at its 3917th meeting, on 18 August 1998, decided further to extend the deadline for nominations until 14 September 1998. The President of the Council informed the Secretary-General of that decision by means of a letter dated 18 August 1998 (S/1998/761).

9. The 22 nominations which had been received within the period stipulated in subparagraph 3 (b) of article 12 of the Statute of the International Tribunal for Rwanda, as extended by the Security Council in the decision taken at its 3908th meeting, on 15 July 1998, and as further extended by the Council in the decision taken at its 3917th meeting, on 18 August 1998, were forwarded by the Secretary-General to the President of the Security Council, in accordance with subparagraph 3 (c) of article 12, by means of a letter dated 17 September 1998. At its 3934th meeting, on 30 September 1998, the Security Council, in accordance with subparagraph 3 (c) of article 12 of the Statute of the Tribunal, considered the nominations received by the Secretary-General and established a list of 18 candidates for transmittal to the General Assembly. The list was adopted by the Council in its resolution 1200 (1998) of 30 September 1998 and was formally conveyed to the President of the General Assembly by means of a letter dated 30 September 1998 from the President of the Security Council (A/53/442).

10. The list of candidates for judges and the procedure of the election of the judges of the Trial Chambers of the International Tribunal for Rwanda are set out below. The curricula vitae of the candidates will be transmitted to the General Assembly in a separate document.

II. List of candidates for judges of the Trial Chambers of the International Tribunal for Rwanda

11. The list of candidates for judges of the Trial Chambers of the International Tribunal for Rwanda is as follows:

Ms. Eugénie Liliane Arivony (Madagascar)

Mr. Pavel Dolenc (Slovenia)

Mr. Salifou Fomba (Mali)

Mr. Willy C. Gaa (Philippines)

Mr. Asoka de Z. Gunawardena (Sri Lanka)

Mr. Mehmet Güney (Turkey)

Mr. Aka Edoukou Jean-Baptiste Kablan (Côte d'Ivoire)

Mr. Laïty Kama (Senegal)

Mr. Dionysios Kondylis (Greece)

Mr. Bouba Mahamane (Niger)

Mr. Erik Møse (Norway)

Mr. Yakov Ostrovsky (Russian Federation)

Mr. Cheick Dimkinsedo Ouédraogo (Burkina Faso)

Ms. Navanethem Pillay (South Africa)

Ms. Indira Rana (Nepal)

Mr. William Sekule (United Republic of Tanzania)

Mr. Tilahun Teshome (Ethiopia)

Mr. Lloyd George Williams (Jamaica and St. Kitts and Nevis)

III. Procedure for the election of judges

12. The election of judges will take place in accordance with the following provisions:

(a) Article 12 of the Statute of the International Tribunal for Rwanda;

(b) Given the similar nature of the election of judges of the International Court of Justice and the election of judges of the International Tribunal for Rwanda, it was decided at the time of the previous elections of judges in 1995 to follow similar election procedures in the General Assembly. The Secretary-General suggests that this precedent be followed and that rule 151 of the rules of procedure of the General Assembly be applied to the current elections.

13. In accordance with article 12, subparagraph 3 (d), of the Statute of the International Tribunal for Rwanda, the Holy See and Switzerland, being non-member States which maintain permanent observer missions at United Nations Headquarters, will participate in the election in the same manner as the States Members of the United Nations.

14. On the date of the election, the General Assembly will elect nine judges from the list of candidates submitted to it by the Security Council.

15. According to paragraph 1 of article 12 of the Statute of the International Tribunal for Rwanda, judges of the Tribunal shall be persons of high moral character, impartiality and integrity who possess the qualifications required in their respective countries for appointment to the highest judicial offices. According to that same provision, due account shall be taken in the overall composition of the Chambers of the Tribunal of the experience of the judges in criminal law, international law, including international humanitarian law and human rights law.

16. In accordance with subparagraph 3 (d) of article 12 of the Statute of the International Tribunal for Rwanda, the candidates who receive an absolute majority of the votes of States Members of the United Nations and of the non-member States maintaining permanent observer missions at United Nations Headquarters shall be declared elected.

17. The consistent practice of the United Nations has been to interpret the words "absolute majority" as meaning a majority of all electors, whether or not they vote or are allowed to vote. The electors in the General Assembly for current purposes are all 185 Member States, together with the two non-member States mentioned in paragraph 13 above. Accordingly, 94 votes constitute an absolute majority in the Assembly for the purpose of the present election.

18. Only those candidates whose names appear on the ballot papers are eligible for election. The electors will indicate the candidates for whom they wish to vote by placing crosses against their names on the ballot papers. Each elector may vote in the first ballot for no more than nine candidates.

19. If, in the first ballot, the number of candidates obtaining an absolute majority is less than nine, a second ballot will be held, and balloting will continue in the same meeting, if and as necessary, until nine candidates have obtained an absolute majority. In any second or subsequent ballot, each elector may vote for no more than nine candidates less the number of candidates who have already obtained absolute majorities.

20. Following the practice in the election of judges of the International Court of Justice, any second and subsequent balloting shall be unrestricted. Votes may accordingly be cast in any second or subsequent ballot for any eligible candidate who has not yet obtained an absolute majority.

21. If, in the first ballot, more than nine candidates obtain an absolute majority of votes, a second ballot will be held on all candidates, and balloting will continue at the same meeting, if and as necessary, until nine candidates, and no more, obtain an absolute majority. In any such case, each

elector may vote, both in the first ballot and in any subsequent ballot, for nine candidates.

22. When nine candidates obtain the required majority, the President of the General Assembly shall declare the candidates concerned elected.

Notes

[1] Pursuant to article 12, paragraph 2, of the Statute of the International Tribunal for Rwanda, the members of the Appeals Chamber of the International Tribunal for the Former Yugoslavia shall also serve as the members of the Appeals Chamber of the International Tribunal for Rwanda.